IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.788 OF 2004

Mahanagar Telephone Nigam Ltd. ...Petitioners

v/s

Mithibai Parmar and anr. ...Respondents

Ms S.V. Masurkar i/b Mr V.S. Masurkar for Petitioners.

Mr S.N. Pilai for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 27TH JULY 2006.

P.C. :-

1. By this petition, the petitioners challenge the award passed by the Labour Court dated 21st August 2003 directing the petitioner - M.T.N.L. to absorb the respondent No.1 in service and to pay her regular wages from the date of absorption. The learned counsel appearing for petitioners submits that even according to the respondent, she was working every day with the petitioners for four hours. She was not a full time employee. According to the learned counsel therefore, the finding recorded by the Labour Court that there was full work available for her is contrary to the evidence of the respondent. It is further submitted that it was the contention of the petitioners before the Labour Court that because the respondent was a daily wager and she was engaged as casual labour for cleaning the work place, provisions of section 25F of the Industrial Disputes Act were not attracted, but that contention has not been dealt with by the Labour Court. It is further submitted that though the Labour Court has held that the termination of the services of the respondent is illegal, no provision of law is indicated in the entire award as to what provision of law is contravened by the termination. The learned counsel further submits that the Labour Court has directed the petitioners to absorb

the respondent in regular cadre of sweeper without recording a finding that thee is a regular cadre of sweeper and which is the law which entitles the respondent to absorption and regularisation in service. The learned counsel appearing for respondent No.1, on the other hand, submits that the witnesses examined on behalf of the petitioners have themselves stated that the respondent No.1 was working for five to six hours with the petitioners and that there is regular work available for the respondent No.1. It was also contended that presently the work which was assigned to the respondent No.1 is done by a regular employee. The learned counsel submits that though the Labour Court has not recorded a finding that the termination of the services of the respondent No.1 is contrary to any law, according to the learned counsel, the termination of the services of the respondent is contrary to provisions of section 25F of the said Act. The learned counsel is not able to point out the provision of law which gives right to the respondent of being regularised in service of the petitioners. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear that the respondent herself in her deposition on oath stated that she was working from 8.00 a.m. to 12.00 noon. When it is the case of the respondent herself that she was working only for four hours, no way the Labour Court could have improved that

case and recorded a finding that she was working for five to six hours. It is clear from the award that there is no finding recorded as to which is the law which was contravened by the petitioners in terminating the services of the respondent. If one examines the contention of the learned counsel appearing for petitioners that the termination of the services of the respondent was not contrary to the provisions of section 25F of the said Act, perusal of paragraph 9 of the award shows that in so far as the provisions of section 25F of the said Act are concerned, it was the contention of the petitioners that the provisions of section 25F are not applicable. Therefore, unless the Labour Court considers the provisions of section 25F and records a finding that those provisions are applicable, the respondent is not justified in saying that the termination of the services of the respondent was contrary to the provisions of section 25F. In my opinion, recording of the finding by the Labour Court that the termination of the services of the respondent is illegal without indicating the provisions of law which is contravened by the petitioners in terminating the services of the respondent No.1 shows total non-application of mind by the Labour Court to a relevant aspect and therefore, for this sole reason, the finding is liable to be set aside. The Labour Court has not merely held that the termination of the services of

the respondent is illegal but it has gone ahead and directed absorption of the respondent in regular cadre. For issuing a direction for absorption in regular cadre, it was obligatory on the part of the Labour Court firstly to record a finding that on the regular establishment, there is a post of sweeper and it is vacant and secondly that there is an instrument having the force of law which vests right in the respondent to get regularisation in service. Perusal of the award shows that the Labour Court has neither bothered to hold enquiry as to whether there is any post of sweeper available on regular establishment nor has it recorded any finding in that regard. The Labour Court has not even indicated any provision of law which vests in the respondent right to get regularisation in service. The learned counsel appearing for respondent No.1 pointed out to me a Government Resolution of Department of Telecommunication dated 17th February 1995 and contended that according to this G.R., the respondent was entitled to regularisation in service. Firstly, the record does not show that this document has been proved. in any case, I find from the deposition of the respondent that she has not referred to this document. I do not find anything on record which will indicate that this G.R. is binding on the petitioners. On the face of it, this decision of the Telecom Department of the Union of India contained in the G.R. is in relation to the

establishment of the Union of India. It does not become applicable to M.T.N.L. automatically, it will have to be adopted by the M.T.N.L. Not even an attempt has been made by the respondent to bring on record as to how this G.R. is binding on M.T.N.L. Despite the fact that there is no finding on this aspect recorded by the Labour Court and there is no material produced on record by the respondent to show that this G.R. is relevant and binding, still an argument was raised before me that it is because of this G.R. that the respondent becomes entitled for regularisation in service. It goes without saying that the argument has no force. It is found that the award made by the Labour Court suffers from total non-application of mind to the relevant aspects and the findings have been recorded by the Labour Court contrary to the material available on record. Obviously, therefore, the award is liable to be set aside. In the result therefore, the petition succeeds and is allowed, rule is made absolute in terms of prayer clause (e). The respondent No.1 is directed to pay costs of this petition to the petitioners.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.